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June 1, 2006

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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Mr. Adam Schwartz
Attorney
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

**Re: Response of California Gubernatorial Candidate Phil Angelides
to Matter Under Review ("MUR") #5711**

Dear Mr. Schwartz:

I serve as campaign counsel to California gubernatorial candidate, Phil Angelides, and his candidate campaign committee, Angelides 2006. We are in receipt of a complaint filed on March 7, 2006 by the California Republican Party against Angelides, Senators Diane Feinstein and Barbara Boxer and House of Representatives Minority Leader Nancy Pelosi. Based on the factual and legal information below, the Commission should find there is no reason to believe a possible violation of the Federal Election Campaign Act ("FECA" or "the Act") has occurred or is about to occur. Therefore, the Commission should take no action on the basis of this complaint.

Factual Background

Angelides currently serves as State Treasurer of California. He is seeking the Democratic nomination for the Governor at California's primary election to be held June 6, 2006. Therefore, Angelides is a candidate for non-federal office. As permitted under both federal and California law, Angelides sought endorsements of his candidacy from other elected officials, including federal, state and local officials. After obtaining those endorsements, Angelides has promoted the endorsements through use of his campaign website (www.angelides.com).

At the time the complaint was filed, the Angelides website featured a photograph and title of Feinstein, Boxer and Pelosi on its homepage and identified the federal candidates as "campaign co-chairs." The titles are honorary and do not reflect any actual direct involvement in the day-to-day operations of the Angelides campaign. These photographs and titles were added to the website on or about September 2005.¹ Currently, these same photographs and titles are no longer on the homepage, but are on the "Endorsements" section of the website, along with many other listed endorsements, including other federal candidates. In addition, various photographs of Angelides scroll across the top of the homepage. One of those

¹ The appearance of the Federal candidates' names, images and endorsements on the website were not "coordinated" with the Federal candidates featured. See, 11 C.F.R. 109.21

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photographs features Angelides and Senator Boxer, with Congresswomen Pelosi on the side of the photo.

The website also has a page through which donors may contribute to the Angelides 2006 campaign committee. That "Contribute" page is a separate and distinct section of the website. A person wanting to make a contribution to the campaign must click the "Contribute" button from the front page to navigate to the separate contribution page to donate. None of the photographs or titles of federal candidates appear on the "Contribute" page, nor is there any other mention of federal candidates on the "Contribute" page. The only location on the Angelides.com website where a person may make a contribution to the campaign committee is the "Contribute" page. The pages enumerating the "campaign co-chairs," the "Endorsements" page and the pages with the scrolling image of Senator Boxer do not "solicit" funds.

Argument

For the reasons set forth below, this complaint is baseless. There is no reason to believe that any of the individuals listed in the complaint violated or will violate FECA. The Act, as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), permits federal candidates and officeholders to endorse and/or aid candidates for non-federal offices. Generally, the Act limits two activities of federal candidates involved in supporting non-federal campaigns: solicitation of non-federal funds and the use of non-federal funds for public communications that promote, attack, support or oppose federal candidates. Neither of these two prohibited activities occurred here.

1. The Act Does Not Provide for "Aiding and Abetting."

As a threshold matter, the only allegation in the complaint directly against Angelides is that he "violated the Act by aiding and abetting Senators Feinstein and Boxer and House of Representatives Minority Leader Pelosi in soliciting soft money contributions in violation of federal law." Complaint ¶ 18. The Act contains no such provision for the Commission to find a non-federal candidate "aided and abetted" federal candidates in allegedly violating the Act. In addition, as set forth below, no violations of the Act occurred or are about to occur; therefore, Angelides could not have "aided or abetted" anyone in violating the Act.

2. The Appearance of the Federal Candidates on the Angelides 2006 Website is Not a Solicitation As Defined Under Federal Law.

The Act prohibits federal officeholders from soliciting, receiving, directing, transferring or spending funds for a non-federal election and from disbursing funds in connection with non-federal elections unless the funds are within the contribution limits of federal law and are from federally-permissible sources. 2 U.S.C. 441(e)(1).

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In the circumstances described in the complaint, no violation of this prohibition has occurred. The Commission's regulations specifically define "solicit" to mean "to ask that another person make a contribution, donation, transfer of funds or otherwise provide anything of value." 11 CFR 300.2(m).² Further, the regulations specify that "[a] solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, *contains a clear message asking, requesting, or recommending that another person make a contribution . . . A solicitation does not include mere statements of political support . . .*" *Id* (emphasis added).

The Commission regulations contemplate the complexity of website communications and separate website content on political policies from content on solicitation of contributions. In 11 C.F.R. §300.2(m)(1)(iii), the regulations conclude that a communication that directs the viewer to a "Web page that is not specifically dedicated to facilitating the making of a contribution or donation," does not in itself result in a solicitation.

Further, the Commission regulations articulate several examples of what would constitute a solicitation. None of those examples apply to the factual circumstances here. They include statements such as "[t]he candidate will be very pleased if we can count on you for \$10,000." 11 C.F.R. §300.2(m)(2)(xii). Importantly, the regulation also provides examples of what is not a solicitation, such as "[a] Federal officeholder says: 'Our Senator has done a great job for us this year. The policies she has vigorously promoted in the Senate have really helped the economy of the State.'" 11 C.F.R. §300.2(m)(3)(vi).

Here, any references to the federal candidates appear on portions of the Angelides.com website that are "not specifically dedicated to facilitating the making of a contribution or donation." In addition, the "campaign co-chairs" are merely making statements of political support as permitted under the regulation, and are in no way soliciting contributions. There is no "clear message" by the federal candidates "asking . . . that another person make a contribution" and the appearance of the federal candidates endorsing Angelides are "statements of political support," and, therefore, are not solicitations.

The complaint also alleges the federal candidates "actively have participated in Angelides' fundraising efforts, including participation in his broadcast advertisements which refer contributors to the offending website." Complaint, ¶ 17. This claim is directly contrary to the regulation defining "solicit," which explicitly states that "a communication does not, in and of itself, satisfy the definition of 'to solicit' merely because it includes the address of a Web page that is not specifically

² The current Commission regulation defining "solicit" became effective April 19, 2006. The Commission undertook to amend the regulation in response to a Court of Appeals decision that remanded the definition to the Commission to undertake action consistent with the court's decision. However, even prior to the regulatory amendment, the definition of solicit would not encompass the situation here. The former definition stated " . . . to solicit means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or anything of value, is to be made or provided directly, or through a conduit or intermediary." Even under this former definition, there is no "solicitation" in the activities enumerated in the complaint

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dedicated to facilitating the making of a contribution or donation.” 11 C.F.R. §300.2(m)(1)(iii).³ Here, the broadcast advertisements direct the viewer to www.angelides.com. As stated above, that website is “not specifically dedicated to facilitating the making of a contribution or donation” and, therefore, inclusion of the website address in the broadcast advertisements containing federal candidates does not result in an impermissible “solicitation” by the federal candidates.

In conclusion, the appearance of the federal candidates on the Angelides.com website or in broadcast communications including the website address, does not result in an impermissible solicitation by the federal candidates.

3. Since No “Solicitation” Has Occurred, the Federal Disclaimer Language is Not Necessary.

The second count of the complaint alleges the federal candidates violated federal law by “participating in solicitation of soft money funds without any disclaimer concerning their intention not to raise funds in excess of the limitations on federal contributions.” Complaint, ¶ 16. However, as detailed above, the appearances of the federal candidates on the website do not constitute “solicitations” under federal law. Therefore, no such disclaimers are required.

In addition, the complaint cites the Commission’s “Campaign Guide for Congressional Candidates and Committees” and Commission Advisory Opinions for the proposition that “no solicitation materials mentioning the candidate may solicit funds outside the limits and prohibitions of the Act.” Complaint, ¶ 11. However, both the candidate campaign guide and the Advisory Opinions cited contemplate a situation where a federal candidate is attending a state candidate’s fundraising event. Those disclaimer statements and safe-harbor language do not apply here where there is no fundraising event and absolutely no “solicitation” by the federal candidates.

4. It Is Permissible for Angelides to Publicize Endorsements of Federal Candidates and Such Communications Do Not “PASO” the Federal Candidates.

The Act, as amended by BCRA, and interpreted by the Commission allows federal candidates and officeholders to endorse state candidates’ campaigns for state office. In addition, a state candidate “may spend non-federal funds for a public communication in connection with an election for State or local office that refers to a clearly-identified Federal candidate so long as the communication does not promote, support, attack, or oppose any candidate for Federal office.” Advisory Opinion 2003-25, citing 2 U.S.C. § 441i(f)(2) and 11 C.F.R. 300.72.

As the Commission noted in its Advisory Opinion 2003-25, “[o]ne of the BCRA’s principal sponsors, Senator Feingold, explained that the relevant BCRA provisions would not prohibit

³ In its Explanation and Justification for the new regulation, the Commission stated “[t]his clarification is intended to ensure that an organization’s attempt to publicize its own contact information for non-fundraising purposes will not be treated as a solicitation.” 71 Fed. Reg. 13931 (March 20, 2006).

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“spending non-Federal money to run advertisements that mention that [state candidates] have been endorsed by a Federal candidate . . . so long as those advertisements do not support, attack, promote or oppose the Federal candidate.”

In Advisory Opinion 2003-25, the Commission concluded that a television advertisement featuring a federal candidate's endorsement of a non-federal candidate, where the advertisement endorsed the candidacy of the non-federal candidate and not the federal candidate, did not support, attack, promote or oppose the federal candidate. Similarly, the Angelides 2006 site merely demonstrates the federal candidates' endorsement of Angelides' non-federal candidacy, and does not support, attack, promote or oppose the federal candidates.

Therefore, it is absolutely permissible for the federal candidates to endorse Angelides for Governor and it is permissible for Angelides to spend non-federal funds to announce those endorsements on his website and in other communications, because those communications do not promote, attack, support or oppose (“PASO”) the federal candidates.

Conclusion

For the foregoing factual and legal reasons, I urge the Commission to find there is no reason to believe a possible violation of the Act has occurred or is about to occur. The Commission should take no action on the basis of this complaint. If I can be of further assistance in this matter, please contact me.

Very truly yours,

OLSON HAGEL & FISHBURN LLP


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